

# MANUAL OF RECORDS

DEPARTMENT OF THE ARMY, UNITED STATES

WASHINGTON, D. C. 20315

FOR THE RECORDS ADMINISTRATION, THE ARMY  
AND THE ARMY RESERVE

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(16,806.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER-TERM, 1898.

No. 247.

WILLIAM M. PRICE, ADMINISTRATOR OF HENRY C.  
MILLER, DECEASED, APPELLANT,

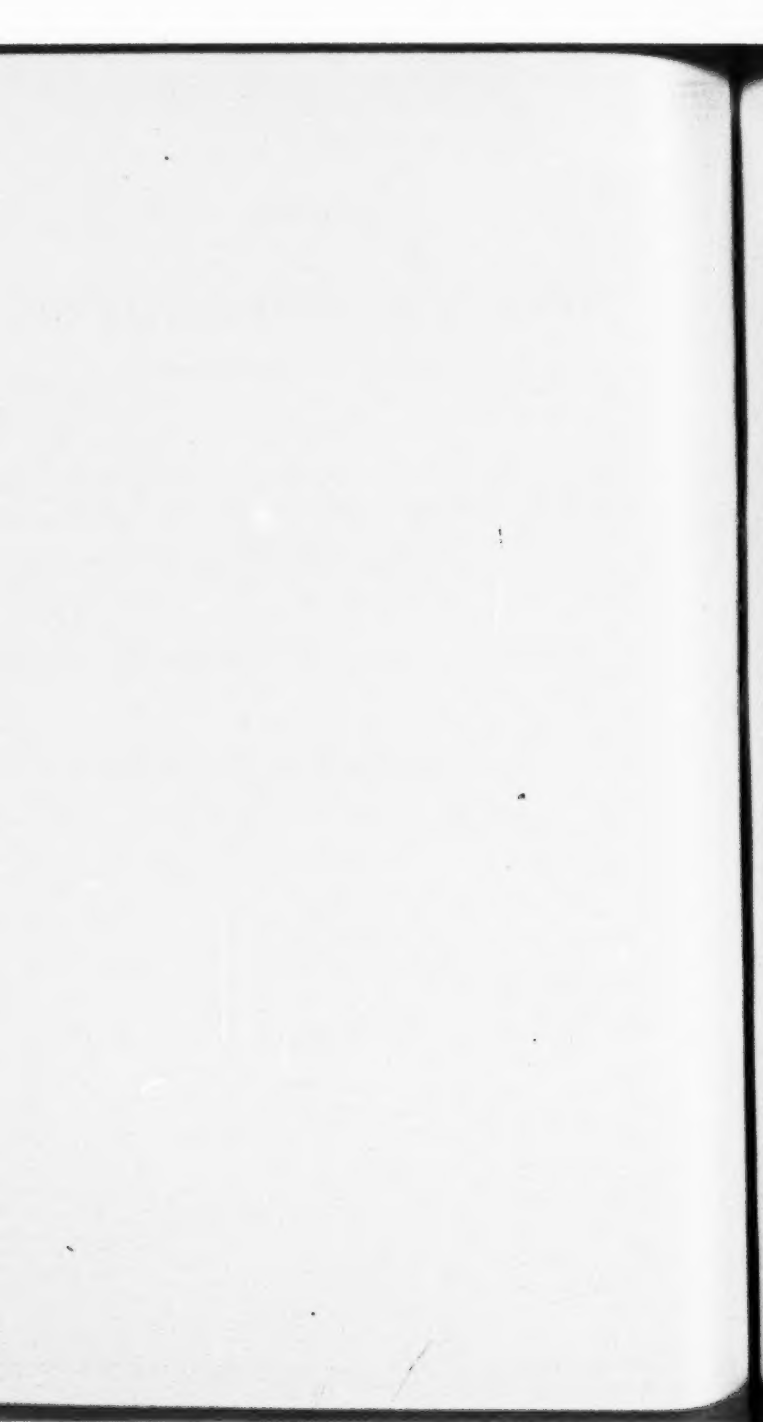
*vs.*

THE UNITED STATES AND THE OSAGE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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## In the Court of Claims.

HENRY C. MILLER, JR., W. M. PRICE, Trustee }  
 for Stephen C. Price and Adele Price, and }  
 R. M. Reynolds, Public Administrator of }  
 Saline County, Missouri, and Administrator }  
*de bonis non* in Charge of Estate of P. W. }  
 Thompson, Deceased, Plaintiffs,

} Indian Depredation.  
 } No. 6126.

vs.

THE UNITED STATES and THE OSAGE TRIBE }  
 of Indians, Defendants.

I.—*Petition and Request for Judgment.* Filed December 14, 1891.

Whereas a claim, # 1005, amounting to \$13,000, for the payment of losses by Indian depredations has been heretofore filed in the Department of the Interior by H. C. Miller and Phillip W. Thompson; and whereas said claim has heretofore been approved and allowed by the Indian Office and the Secretary of the Interior in the sum of \$8,200, in pursuance of the act of Congress making appropriations for the current and contingent expenses of the department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30th, 1886, and for other purposes, approved March 31st, 1885, and subsequent Indian appropriation acts, and reported to Congress by Executive Document, House of Representatives, # 122, of the 51st Congress, 1st session; and whereas it was found, approved, and allowed by the said Indian Office and the Secretary of the Interior that of the said \$8,200 the sum of \$6,800 was to be paid to the legal representatives of H. C. Miller, and the remainder, \$1,400, to the legal representatives of Phillip W. Thompson;

And whereas the said H. C. Miller is deceased; and whereas in his lifetime he conveyed by deed, duly executed, all his interest in and to the said claim to his son, Henry C. Miller, and to his grandchildren, Stephen C. and Adele Price; and whereas the said grandchildren are represented by their father, William M. Price, as trustee; and whereas the said Phillip W. Thompson is deceased; and whereas R. M. Reynolds, public administrator of Saline county, Missouri, has been appointed administrator *de bonis non* of the estate of the said Phillip W. Thompson, deceased; and whereas it is provided by the act approved March 3rd, 1891, entitled An act to provide for the adjudication and payment of claims arising from Indian depredations, that claims examined, approved, and allowed by the Secretary of the Interior or under his direction, etc., shall have priority of consideration, and judgment for the amount therein found to be due shall be rendered unless either the claimant or the United States shall elect to reopen the case and try the same before the court:

Now, therefore, the above-named plaintiffs, having duly considered the foregoing allegations, do elect not to reopen the case and try the same before the court, but ask that judgment for the amount

heretofore found to be due the said claimants as hereinbefore set forth, to wit, \$8,200, shall be rendered in full of said claim and divided between and paid to the said plaintiffs according to their respective interests; but in case the United States shall elect to reopen the case, the plaintiffs reserve the right to claim a larger sum than heretofore allowed.

Upon the trial hereof, death of the original claimants and proof of the plaintiffs' right to prosecute this action will be duly made to the court.

HENRY C. MILLER, JR.,  
W. M. PRICE,

*Trustee for Stephen C. Price and Adele Price, and*

R. M. REYNOLDS,

*Public Administrator of Saline County, Missouri, and*

*Administrator de Bonis Non of the Estate of*

*P. W. Thompson, Deceased,*

By B. B. CUSHMAN, *Their Agent.*

B. W. PERKINS,  
*Att'y for Plaintiffs.*

CITY OF WASHINGTON, }  
*District of Columbia,* } ss:

B. B. Cushman, being duly sworn, deposes and says: I am the agent for the plaintiffs in this case. I have read the above petition and the matters therein stated are true to the best of my knowledge and belief.

B. B. CUSHMAN.

Subscribed and sworn to before me this 12th day of December, 1891.

[SEAL.]

ALSON L. BAILEY,  
*Notary Public.*

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## II.—*Proceedings in the Case.*

On April 24, 1895, the defendants filed their election to reopen the case, but thereafter, on May 2, 1895, they withdrew the same by leave of court.

Thereupon, to wit, on May 2, 1895, the defendants filed a motion to dismiss the case, but subsequently, to wit, on October 15, 1895, leave was granted them by the court to withdraw said motion to dismiss case, and to file in lieu thereof their demurrer to said original petition.

On March 23, 1896, the court made the following order sustaining the demurrer, to wit:

Demurrer sustained with leave to amend the petition on or before the first Monday in July, 1896, averring the citizenship of the parties whose property is alleged to have been taken or destroyed at the date thereof, and substituting the administrator of Henry C. Miller, deceased, as claimant in place of Henry C. Miller, Jr., and

of John M. Price, trustee, and setting out the full names and residence of all the parties.

By the court:

WILLIAM A. RICHARDSON,  
Chief Justice.

March 23, 1896.

5 III.—*Amended Petition. Filed April 25, 1896.*

Pursuant to the order of March 23, 1896, the claimants, on the 25th April, 1896, filed an amended petition, which is as follows:

In the Court of Claims.

WILLIAM M. PRICE, Administrator of Henry C. Miller, Deceased, and R. M. Reynolds, Public Administrator of Saline County, Missouri, and Administrator <i>de bonis non</i> of Phillip W. Thompson, Deceased, Plaintiffs,	} Indian Depredation Claim. No. 6126.
<i>vs.</i>	
THE UNITED STATES and OSAGE INDIANS, Defendants.	}

To the honorable the judges of the Court of Claims:

The amended petition of William M. Price, administrator *cum testamento annexo* of Henry C. Miller, deceased, and R. M. Reynolds, public administrator of Saline county, Missouri, and administrator *de bonis non* of Phillip W. Thompson, deceased, respectfully represents:

1. That they are citizens of the United States and residents of the State of Missouri.

2. That the said Henry C. Miller and Phillip W. Thompson, deceased, were at the time of the depredation hereinafter referred to and until the day of their death citizens of the United States and residents of the county of Saline, in the State of Missouri.

6 3. That in the spring of the year 1847 the said Henry C. Miller and Phillip W. Thompson started from their place of residence in the county of Saline, State of Missouri, with five wagons heavily laden with valuable goods and merchandise, together with 22 yoke of valuable oxen, bound for Santa Fé, New Mexico, at which place they designed to dispose of the same; that the said Henry C. Miller and Phillip W. Thompson had advanced on their way towards Santa Fé as far as a place called Diamond Springs, where they came up with a train of Government wagons under the command of Captain John G. Hayden, and they continued to travel with and under the protection of the Government train until they reached a stream in the Indian country called Pawnee fork, near the Arkansas river, at which place they, as well as aforesaid train of Government wagons, were detained on account of high water; that on or about the 23rd day of June, 1847, while being then and

there detained, as aforesaid, a party of seven Indians came to their encampment, while some 70 or 80 other Indians remained at a short distance. The said Indians were Osage Indians belonging to a tribe at amity with the United States. They conversed with some of the company who could speak the Osage language and said they were on a hunt up the Pawnee fork. Said Indians then left the camp, but returned on the following morning, to wit, the 24th of June, 1847, at which time they made an attack on the stock belonging to the said Henry C. Miller and Phillip W. Thompson, wounding one yoke of the oxen; that the said Indians made another and further attack on the said stock on the morning of the 26th of

June, 1847, while the said Henry C. Miller and Phillip W. Thompson were in camp on a stream called Coon creek, near the Arkansas river, and that the said Indians then and there took from and drove off twenty and one-half yoke of the oxen belonging to the said Henry C. Miller and Phillip W. Thompson, as well as many yoke of oxen belonging to the Government train before mentioned; that owing to the loss of their oxen the said Henry C. Miller and Phillip W. Thompson were left wholly without the means of either getting their goods on to Santa Fé or getting them back to the States, being left, as they were then, with only one and one-half yoke of oxen and in the midst of an uninhabited and wilderness country; that the said oxen, wagons, and contents belonged jointly to the said Henry C. Miller and Phillip W. Thompson, the said Henry C. Miller being the owner of four-fifths of the same and the said Phillip W. Thompson being the owner of one-fifth; that the said goods, wagons, and oxen were worth at least \$15,000 at the place where they then were if the said Henry C. Miller and Phillip W. Thompson had possessed the means of getting them to Santa Fé, but, being left without any positive means of conveyance of the said goods, they were compelled to sell them to a Mr. Romans, a Santa Fé trader, for less than \$2,000, thereby sustaining a loss of over \$13,000; that the said Henry C. Miller and Phillip W. Thompson immediately made application to see Major Harvey, the superintendent of Indian affairs in Saline county, Missouri, who declined to take jurisdiction of the case on the ground that the offense was not committed within his superintendency;

that the said Henry C. Miller and Phillip W. Thompson then  
8 proceeded to take depositions and proofs in the premises and forwarded them to the Honorable D. R. Atchison, then a Senator from the State of Missouri in the Congress of the United States, but the said Atchison returned the papers to the said H. C. Miller and Henry W. Thompson, with the information that the claim could not be presented to Congress until it had been submitted to the superintending agent or subagent having jurisdiction thereof; that the said Henry C. Miller and Phillip W. Thompson then furnished to Mr. Richardson, United States agent of the Osage Indians, the documents in proof of the facts, but he resigned his office about the time of receiving said documents and handed them over to his successor in office, Andrew J. Dorn, of Ohio, who presented same to the Indians of the Osage tribe in council, but they

neglected and refused to make satisfaction for the same; that the said Henry C. Miller and Phillip W. Thompson, having failed to obtain the redress to which they were entitled, introduced their memorial in Congress, but, no final action having been taken thereon, the said Henry C. Miller and Phillip W. Thompson subsequently filed their claim in the Interior Department, which, after thorough examination, was approved on the 13th of December, 1889, when the Secretary of the Interior awarded the sum of \$8,200 in full satisfaction of said claim—\$6,800 to be paid to the legal representatives of Henry C. Miller, and \$1,400 to be paid to the legal representatives of Phillip W. Thompson; that they are unable to make more certain and distinct allegations as to the character of the goods lost and their value, because after diligent search they have not been able to find the inventories of the property and affidavits of the witnesses, now dead, which, as they are informed, accompanied the original petition.

4. Your petitioners are advised that, inasmuch as the said claim has been heretofore approved and allowed by the Indian Office and by the Secretary of the Interior in the sum of \$8,200, in pursuance of the act of Congress making appropriations for the current and contingent expenses of the department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1886, and for other purposes, approved March 31, 1885, and subsequent Indian appropriation acts, and reported to Congress in Executive Document, House of Representatives, 122 of the 51st Congress, 1st session, and inasmuch as it was found by said Secretary of the Interior that the sum of \$8,200 was justly due, the sum of \$6,800 to be paid to the legal representatives of the said Henry C. Miller and the sum of \$1,400 to be paid to the legal representatives of the said Phillip W. Thompson, and inasmuch as it is provided by act of Congress, approved March 3, 1891, entitled An act "to provide for the adjudication and payment of claims arising from Indian depredation," that claims examined, approved, and allowed by the Secretary of the Interior shall have priority of consideration, and judgment for the amount therein found to be due shall be rendered, unless either the claimant of the United States shall elect to reopen the case and try the same before the court, and the said plaintiffs electing not to reopen the said case and try the same before the court, that they are entitled to judgment for the amount heretofore found to be due as hereinbefore set forth. They therefore ask that judgment for the sum of \$8,200 shall be rendered by the court in full satisfaction of said claim and paid to the said plaintiffs according to their respective interests, to wit: \$6,800 to your petitioner William M. Price, as administrator of the said Henry C. Miller, deceased, and \$1,400 to your petitioner R. M. Reynolds, public administrator of Saline county, Missouri, and administrator *de bonis non* of Phillip W. Thompson, deceased.

5. Your petitioners present herewith a certified copy of the order made by the probate court of Saline county, Missouri, on the 23rd of November, 1891, ordering that Robert M. Reynolds, public administrator, take charge of and manage the unadministered estate of



Phillip W. Thompson, deceased, and also a certified copy of the appointment and qualification of the said William M. Price as administrator *cum testamento annexo* of the estate of the said Henry C. Miller, deceased.

Very respectfully,

WM. M. PRICE,  
*Administrator cum Testamento Annexo*  
*Henry C. Miller, Dec'd.*

R. M. REYNOLDS,  
*Public Administrator of Saline County, Missouri,*  
*and Administrator de Bonis Non of*  
*Phillip W. Thompson, Deceased.*

JOHN GOODE,  
*Att'y for Complainants.*

STATE OF MISSOURI, }  
*City of St. Louis,* } ss :

William M. Price, being duly sworn, upon oath says that he is the administrator *cum testamento annexo* of Henry C. Miller, Senior, deceased, late a resident of Saline county, Missouri, one of  
11 the above-named petitioners, and that the facts set forth in said amended petition are true as he verily believes.

WM. M. PRICE.

Sworn and subscribed before me this 20th day of April, 1896.

[SEAL.]

JOHN F. GREEN,  
*Notary Public, City of St. Louis.*

#### IV.—Further Proceedings in the Case.

On December 17, 1896, the defendants filed a demurrer to the amended petition.

On the 15th of February, 1897, the court made an order overruling said demurrer.

On the 8th of April, 1897, the defendants filed their election to reopen the case.

On the 9th day of June, 1897, the defendants filed a general traverse, to wit:

*General Traverse.*

Now comes the assistant attorney general, on behalf of the defendant Indians and the United States, and, answering the petition of the claimants herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

JOHN G. THOMPSON,  
*Assistant Attorney General.*

12 V.—*Findings of Fact (as Amended) and Conclusion of Law in the Case of William M. Price, Administrator of Henry C. Miller, Deceased.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

I.

At the time of the depredation hereinafter stated, claimant's decedent, Henry C. Miller, was a citizen of the United States and a resident of the State of Missouri, where claimant now resides.

II.

On the 26th day of June, 1847, near the Arkansas river, on the route from western Missouri to Santa Fé, at a place in what is now the State of Kansas, Indians belonging to the Osage tribe took and drove away 32 head of oxen, the property of said decedent, which at the time and place of taking were reasonably worth the sum of four hundred dollars (\$400).

At the time said oxen were taken they were being used by said decedent in the transportation of goods along the route aforesaid, and in consequence of such taking decedent was compelled to abandon the trip and to sell his portion of said goods and four (4) wagons belonging to him for the sum of one thousand two hundred dollars (\$1,200).

The goods and wagons of said decedent at the time of the depredation were reasonably worth the sum of seven thousand six hundred dollars (\$7,600).

Said property was taken as aforesaid without just cause or provocation on the part of the owner or his agent in charge and has not been returned or paid for.

III.

At the time of said depredation said defendant Indians were in amity with the United States.

IV.

A claim for the property so taken was presented to the Interior Department in June, 1872, and evidence was filed in support thereof.

*Conclusion of Law.*

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover judgment against the United States and the Osage tribe of Indians in the sum of four hundred dollars (\$400), out of which amount the sum of eighty dollars is to be paid to John Goode, Esq., as attorney's fees.

The petition as to the claim for goods and wagons belonging to claimant's decedent and disposed of as set forth in finding II is dismissed for want of jurisdiction.

VI.—*Opinion of the Court.*

WELDON, J., delivered the opinion of the court:

The petition embraces two claims of different parties, having distinct and separate interests, and therefore separate judgments will be rendered on the claim of each. In the year 1847, the decedent Henry C. Miller and the decedent Philip W. Thompson, both being native-born citizens of the United States, were owners in severalty of 44 head of oxen, 5 wagons, and a large amount of dry goods.

While they were so possessed the defendants The Osage Indians, then being in a state of amity with the United States, attacked the train of said decedents and took from their possession about 40 head of said oxen, drove them away, and they became lost to the decedents.

The depredation was committed on the 26th of June of said year near the Arkansas river, on the route from western Missouri to Santa Fé. In consequence of the taking of the cattle the parties were compelled to abandon their trip, and were forced to sell the goods at a much less price than their cost and their value at the point of destination. The property belonged in the proportion of four-fifths to Miller and one-fifth to Thompson. The claim was presented to the Interior Department in June, 1872, and on December 13, 1889, the Secretary of the Interior recommended an allowance of \$8,250, which was not paid. In the amount is embraced the loss on the goods.

The claimants brought suit on the allowance of the Secretary, but the defendants elected to reopen the case, contesting it on the ground that the allowance of the Secretary was erroneous as to the loss on the goods. The defendants have not by the introduction of new evidence, sought to attack the claim upon the whole case; but upon the specific ground that the allowance is based upon an erroneous construction of the law as to the extent of the claimants' right of recovery.

A demurrer was filed to the original petition, which was sustained and leave given to amend, an amended petition was filed on the 26th of April, 1896, and to the amended petition a demurrer was also filed, which was overruled. The cause was tried on the amended petition and plea to the merits. By the allegations of the amended petition the suit is brought on the award of the Secretary of the Interior, and being so founded it is not necessary that the petition allege matters of fact which constituted the original claim. It is sufficient if the petition shows with reasonable certainty the finding and award of the Secretary.

It was contended in the argument on the demurrer that the petition was defective in not alleging that the depredation was committed "without just cause or provocation on the part of the owner or agent in charge and not returned or paid for."

The court said informally in substance in overruling the demurrer, if the decedents provoked the Indians to commit the depredation so as to relieve them from responsibility, that is a defense on

he merits; but as we are advised by the form of the petition we should hold that it was not the fault of the decedents that the depre-dation was committed. As to the want of an allegation that the property had not been returned or paid for, that question can only be reached on the merits of the cause should it be reopened by the election of the defendants.

In the argument of the first demurrer it was contended by counsel for the claimant, that inasmuch as the defendants had not elected to reopen the cause, they had no right to interpose objections to the sufficiency of the petition; but the court held, that the defendants had a right to interpose a demurrer without first exercising the right to reopen. Although the merits of the claim cannot be attacked except by a reopening by the defendants when the suit is based upon the award of the Secretary, they have a right to interpose objections to the sufficiency of the petition and try by demurrer the legal question whether upon the showing of the petition there is a right of recovery.

In this case the defendants not abiding by their demurrer, have filed an election to reopen; but have not introduced additional evidence, so that the case is to be decided on the evidence filed in the Department on which the Secretary based the award.

The act of 1891, (26 Stat. L., 851) provides as to cases determined by the Secretary that they "shall have priority of consideration by such court, and judgment for the amount therein found due shall be rendered unless either the claimant or the United States shall elect to reopen the case and try the same before the court, in which event the testimony given by the witnesses and the documentary evidence, including reports of the department agents therein, may be read as depositions and proofs. Provided, that the party electing to reopen the case shall assume the burden of proof."

The effect of this provision of the statute is, that the party electing to abide by the finding of the department has a *prima facie* right of recovery or defense, and the award must stand in favor of such party unless it is shown by the party reopening the case that the award is erroneous either in fact or in law. The burden of proof is an appreciable quantity in judicial determination, in this, that one of the parties has a *prima facie* right of recovery, and unless that right is overcome by the introduction of proof it must prevail. The right may be very frail in its character, but it is sufficient to base a recovery upon as long as it is not successfully assailed. The statute does not imply that the burden of proof involves a necessity and obligation upon the part of the party reopening the case to introduce new and additional evidence to that which is on file in the department, but leaves it open to implication that the case may be determined on the evidence on file, and upon that evidence the court may decide that the award of the Secretary is erroneous either in fact or in law. Congress in the enactment of the law may have properly assumed, that in a majority of cases the party presented all his testimony to the department, as that is the usual practice in the pre-

15      sentation of claims and demands for adjustment either to a court or to an arbitration; and therefore to limit the jurisdiction of the court to cases in which additional evidence is introduced would be to circumscribe the power of the court in violation of the purpose and intent of Congress. It is said in substance in the case of *Wolverton* (29 C. Cls. R., 19) that the award of the Secretary of the Interior will not be lightly disturbed by the court on the same evidence. See also *Montoya Case* (32 C. Cls., 71).

The burden of proof therefore requires, that the party reopening the case shall adduce to the court a substantial reason either in fact or in law why the award of the Secretary should be reversed in whole or in part. It is said in substance in the case of *Cox* (29 C. Cls. R., 349) that when the defendants elect to reopen a case they may set up any defenses which might have been set up in the Interior Department. Under that construction of the law the jurisdiction of the Secretary may be raised by the defendants either as to a part or the whole of a claim.

The defendants contest the right of the claimant to recover on the award of the Secretary on the ground, that in the allowance he included the difference between the value of the goods and the price at which the decedents were compelled to sell.

If this were a proceeding at common law against an ordinary wrongdoer in the form of an action *ex delicto*, the right to recover to the full extent of the injury inflicted, including direct and consequential damages, would be clear and unquestionable; but it being a proceeding under a statute the phraseology of which limits the extent of the recovery, and the consequent right of recovery, the rule is different. The property actually taken in the depredation was the oxen, and the damages incident to the rest of the property were the consequential results of such taking.

The first law of Congress affecting the intercourse of the Indians and the citizens of the United States was passed on the 22d day of July, 1790 (1 Stat. L., 137), and continued for the space of two years. The purpose of that act was to protect the Indians against the encroachments of the whites, by providing severe penalties against them for the commission of certain offenses within the territory of the Indians.

The next act affecting the Indian tribes was passed on the 3d of March, 1793 (1 Stat. L., 329), and is entitled "An act to regulate trade and intercourse with the Indian tribes." This act, as its title indicates, regulates the trade and intercourse with Indians, but contains no provision as to depredations by the Indians on the property of the citizens. This statute continued in force for two years from the 1st of March, 1793.

After the expiration of the act of March, 1793, there was no law regulating or defining the rights of the Indians and the duties of the citizens until the passage of the law of May 19, 1796 (1 Stat. L., 469), entitled "An act to regulate trade and intercourse with Indian tribes and to preserve the peace on the frontier."

The title of this act indicates a broader purpose and policy than the former statute in providing obligations and liabilities on the

part of the Indians. In the fourteenth section of the act it is enacted "that if any Indian or Indians belonging to any tribe in amity with the United States shall come over or cross the said boundary line into any State or Territory inhabited by citizens of the United

16 States and there take, steal or destroy any horse, horses, or any other property belonging to any citizen or inhabitant of the United States \* \* \* or shall commit murder, violence, or outrage upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant \* \* \* to make application to the superintendent or such other person as the President of the United States shall authorize for that purpose," who upon such notice are by the terms of the law required to do certain acts in order to obtain satisfaction from the Indian tribe or nation to which the offending Indian belonged.

The provisions of the act of 1796, re-enacted March 3, 1799 (1 Stat. L., 747), and March 30, 1802 (2 Stat. L., 139), continued to be the law regulating intercourse and trade with the Indians until the year 1834, when the act entitled "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontier" (4 Stat. L., 729) was enacted. The title of this act is the same as that of 1796, and it is much more elaborate in its provisions, but the same in substance in many particulars.

By the seventeenth section of the act of 1834, which is similar to the fourteenth section of the former act, it is in substance provided, that if any Indian whose tribe is in amity with the United States shall within the Indian country "take or destroy the property" of any person within such country, or shall pass from the Indian country into any State or Territory inhabited by citizens of the United States and "there take, steal, or destroy horses or other property" belonging to a citizen or inhabitant, upon that condition of fact certain steps shall be taken upon the part of the owner looking to his indemnification, as provided by the act.

The statute of 1796, the statute of 1834, and the statute of 1891, employ substantially the same words in defining the character of the depredations for which satisfaction is to be made. The first two are identical in language, and the last does not differ from them in substance.

The statute of 1891, provides as its first and fundamental grant of power that the court shall have jurisdiction, first, "All claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation in amity with the United States without just cause or provocation on the part of the owner or the agent in charge and not returned and paid for."

In the case of *Friend* (29 C. Cls. R., 425) it is said: "It is apparent that the act relates exclusively to the claims for property of citizens of the United States taken or destroyed by Indians, etc., as set forth in the first paragraph. That idea runs through all the rest of the act." It is true that in that case the grievance related to a personal injury for which the court held there could be no recovery.

The depredation which Congress intended to afford a remedy for by the act of 1891, is limited by the words "taken or destroyed,"



and is, therefore, necessarily circumscribed by that limitation to property which has been absolutely lost, either by theft or destruction. The act was not intended to cover consequential damages, which might have ensued to a claimant as an incident to the raid on his property, and for which there might be a recovery against a wrongdoer at common law. The court, in the construction of that section of the statute, has confined the liability of the defendants to the value of the property actually taken or destroyed, and has not allowed consequential damages resulting from the commission of the depredation.

In the case of *Brice v. The United States and the Cheyenne and Arapahoe Indians* (32 C. Cls., 23), it is said in reference to the act of 1834, "the Secretary of the Interior had no authority to adjust and allow a claim for consequential damages growing out of the taking of property, and was therefore confined to the consideration of the claim for the value of the mules alleged to have been stolen."

In this case, so far as the raid of the Indians affected the condition, the goods of claimants were untouched; they remained intrinsically so far as condition is concerned in the same state that they were antecedent to the raid and depredation of the defendant Indians.

The effect of the raid was not to destroy or damage the property by diminishing its quality or its quantity; but had the consequential effect of diminishing its value by producing a condition the effect of which was to decrease its commercial worth in precipitating its sale at a place where there was no market in the form of competition.

They did not take or destroy the property of the claimant, but deteriorated its value as the incidental and consequential result of their raid. The court decides that the claimant is entitled to recover the value of the oxen, but no allowance is made for the damages to the goods for the reasons stated in the foregoing opinion.

17 VII.—*Judgment in the Case of William M. Price, Adm'r of Henry C. Miller, Dec'd, No. 6126, Indian Depredations.*

At a Court of Claims held in the city of Washington on the 6th day of December, A. D. 1897, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said claimant, William M. Price, as administrator of Henry C. Miller, deceased, do have and recover of and from the United States and the Osage tribe or nation of Indians, committing the wrong for which this judgment is rendered, the sum of four hundred dollars (\$400), of which sum there is allowed John Goode, Esquire, the claimant's attorney, for prosecuting said claim, the sum of eighty dollars (\$80), fixed by the court according to the provisions of the act of March 3, 1891, chapter 538, section 9 (1, Supplement of Revised Statutes, 2d edition, pages 915, 916). The petition as to the

claim for goods and wagons, as set forth in the findings, is dismissed.

BY THE COURT.

A true copy of record.

18 VIII.—*Application for and Allowance of Appeal.*

WILLIAM M. PRICE, Administrator of Henry	} No. 6126. Indian Depredation.
C. Miller, Deceased,	
vs.	
THE UNITED STATES and THE OSAGE INDIANS.	

From the judgment rendered in the above-entitled cause, on the 6th day of December, 1897, in favor of the claimant, the claimant, by his attorney, on the 29th day of January, 1898, makes application for and gives notice of an appeal to the Supreme Court of the United States.

JOHN GOODE,  
*Attorney for Claimant.*

Filed January 29, 1898.

On the 14th day of February, 1898, it is ordered that the aforesaid application for appeal be allowed as prayed for.

BY THE COURT.

19 In the Court of Claims.

WILLIAM M. PRICE, Administrator of Henry	} No. 6126. Indian Depredation.
C. Miller, Deceased,	
vs.	
THE UNITED STATES.	

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 19th day of February, 1898.

JOHN RANDOLPH,  
*Ass't Clerk Court of Claims.*

Endorsed on cover: Case No. 16,806. Court of Claims. Term No., 247. William M. Price, administrator of Henry C. Miller, deceased, appellant, vs. The United States and The Osage Indians. Filed February 21st, 1898.